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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	MM Docket No. 99-25
	)	
Creation of a Low	)	RM-9208
Power Radio Service	)	RM-9242

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To: The Commission

REPLY COMMENTS OF THE
NATIONAL FEDERATION OF COMMUNITY BROADCASTERS

0. **Introduction**

National Federation of Community Broadcasters ("NFCB"), by their attorney, submit these Reply Comments in response to the Commission's Notice of Proposed Rule Making released on February 3, 1999.[1] NFCB is a grassroots organization of non-commercial, educational public radio stations, with some 200 Commission-licensed broadcast stations and other radio organizations and public telecommunications entities among its members. The comments submitted herein vindicate the Commission's judgment in launching this rule making, and support the adoption of rules for this promising new service. As incumbent radio broadcasters, our membership has a continuing concern that existing service not be disrupted or disfigured by interference from new services. The record should enable the Commission to fashion a balanced approach, guarding against interference and promoting new radio service.

In one way, the record encourages us that more could be done with this service than we had hoped initially. In our comments, pp. 15-16, NFCB expressed doubts that ways could be

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[1] The deadline for Reply Comment was extended until November 15, 1999, by Order released on May 20, 1999, FCC 99-112.

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found within the law for such a new service to promote ownership and participation by unserved and underserved parts of the population, including racial, ethnic and language groupings. We hope that the Commission will re-visit these issues carefully, based on the luminous and important Comments of the Minority Media and Telecommunications Council ("Minority Council"). Their comments in this proceeding will withstand the test of time, and will become the point of departure for any future analysis of mass media ownership policy.

1. **The Record Bolsters Our View that LPFM Should Be Noncommercial Only.**

Incumbent commercial licensees in FM broadcasting, like taxicab medallion holders and attorneys, but unlike the business people in many other industrial or commercial lines, have a regulatory body whom they can implore to restrict new entry and to keep the business for those who are inside already. The arguments are tired, but the proponents never weary of repeating them: To allow excessive new entry will have a devastating effect on profitability, or even survivability of the firms already active. And there is not sufficient business to go around, so that the new entrants will not be economically viable. As in this Docket, inconsistency poses no problem. The new entrant -- category killer? Or too weak to be competitively viable?

.These arguments reach the point of unintentional self-parody here in the National Association of Broadcasters ("NAB") "economic" study for this proceeding.[2] It quotes (at p. 12) approvingly from former Chairman Quello that the growth of stations from 1974 to 1993 had a downside. "It created an industry struggling economically and many stations going silent for financial reasons." ". . . . we have over saturated the market with radio stations to the point that

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[2] John Haring and Harry M. Shooshan III, "LPFM: The Threat to Consumer Welfare," Attachment C to NAB Comments.

one half cannot support themselves."[3] By deciding that LPFM will be a noncommercial-only service, the Commission moves beyond this hoary specter of dreaded competition.

The mirror image argument, that new entrants will stumble and go broke, is strange in the context of incumbent broadcasters' other arguments. Licensees who go dark and return their licenses pose no threat of objectionable interference, or even of competition. In the Comments of the Corporation for Public Broadcasting these familiar contentions have been adapted to the noncommercial milieu:

> The LPFM stations envisioned by the proposal are unlikely to serve enough people, be on the air for enough hours, or be operated by sufficiently experienced licensees to have a significant chance of economic viability.

CPB Comments, pp. 11-12. These were some of the arguments proffered by CPB in 1980 and 1981 in opposition to the Commission creating a low power *television* service, which now has 2,172 licensed stations, compared with all commercial and noncommercial full service TV stations totaling 1,594.[4] CPB appears to be assuming a heavy hardware model of studios, offices, payroll withholding, traffic and billing systems, and mounting light bills. But new technology has shown another way, and extra-legal broadcasters, whatever else they may have accomplished, certainly have identified cost efficiencies, many of which would still be realized,

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[3] In defense of Quello, before that friendly NAB audience he was not offering a quantitative measurement, by himself or anyone. Six years later he would no doubt rephrase his characterizations of the FM radio business. On the state of the industry today, compare Minority Council, p. 12: "We still have the distress sale policy, although hardly any station ever finds itself in distress anymore" – and fn 37. "The only post-1990 distress sale was a $50,000 station in a town of 84 people 40 miles from civilization [citation omitted]."

[4] Broadcast Station Totals as of June 30, 1999, mimeo no. 94249 released on July 19, 1999.

if conformed to sound engineering practice. For that matter, numerous major-market commercial FM stations are close to being fully automated today.

If CPB is concerned that a new class of applicants may arrive on the scene, seeking community service grants or other claims on the scarce Federal budget for public broadcasting, the concern seems unwarranted. In radio, as opposed to TV stations, the Statute authorizes CPB to withhold such grants from any but stations meeting CPB's "eligibility criteria," 47 U.S.C. §396(k)(6)(B). CPB will be entitled to decide that some, or none of the LPFM stations would be qualified. Analogous LPTV service has flourished with a minimum of support from public broadcasting entities. We submit that the Commission and CPB well might re-focus on the statutory charge to public broadcasting, especially in 47 U.S.C. Sec. 396(a)(9): "The Congress hereby finds and declares that -- (9) it is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies."

2. **The Record Supports Emphasis on Facilities of 100 Watts and Below. Our Recommendation of 1 kW Outside the Top 25 Markets Harmonizes With Other Parties' Recommendations.**

From the commenting parties supporting LPFM as well as those in opposition, we note a strong consensus that the most severe implementation issues center on the proposed 1 kW stations, or "LP1000." Thus the engineering study for USA Digital Radio, Inc., states, "In this study the focus is on the LP1000 because such stations pose the greatest threat of interference and are likely to be the most desirable to LPFM operators."[5] From the other side of the

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[5] Moffet Larson & Johnson, Inc., Engineering Report, submitted with Comments of USA Digital Radio, Inc., 8/2/99.

engineering aisle, Theodore S. Rappaport's "Technical Analysis of the Low Power FM Service," 8/26/99, submitted to Media Access Project and filed herein, states:

> We recommend authorizing only 100 watt and weaker stations for LPFM service, except where LP 1000 stations can be authorized without any change to current interference protection regulations. (Id., p. 19).

Our comments advocated restricting the LP1000 service to markets outside any county listed as part of an Arbitron-recognized top 25 market (Comments, p. 12).[6] The Committee on Democratic Communications, National Lawyers Guild ("C.D.C.") would bar LP1000 except in the "most rural" areas, C.D.C. Comment, p. 16. In sum, all these views are quite similar, and the choice of strict separation compliance (Rappoport) or of a definition of "rural" probably can and should come down to the issue of administrative convenience for the Agency. The important highlight finding is that, with LP1000 excluded from congested markets, the strongest criticisms in this record – both economic and technical – are met entirely, or are greatly alleviated.

3. This Record Underscores the Fact that Interference is Principally a Policy Question, Not a Technical Question.

If ever there were a Commissioner or staff member who believed that interference issues were by and large technical, the record herein dispels such notion. Broadcasting services do not operate in an interference-free environment now, nor did they ever. The effort to balance between expended service and minimized interference always has involved a weighting of many factors, including the Commission's limited resources that can be used to adopt and enforce

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[6] One thoughtful supporter of LPFM, offering detailed comments here, United Church of Christ Office of Communications, Inc. et al ("U.C.C.") appears to have analyzed this issue mainly as one of commercial versus "non-comms" -- reasoning that higher power was suggested as needed for competitive viability in commercial uses (U.C.C. Comments, at 30-31). But given U.C.C.'s pro-diversity objectives, their stance would appear to harmonize well with our suggested restriction of LP1000 to smaller markets.

standards, to pre-screen applications and to assure that actual broadcast uses across this Nation are within the law's commands.

More often than not, interference problems have been created by governmental policies, and these have been seen later as having distorted service or retarded technology. The first serious attempt to channel radio was the international treaty adopted at Berlin in 1906, providing that commercial stations be limited to wave lengths of 300 to 600 meters, with most of the then-usable range set aside for governments and navies, at 600 to 1,600 meters.[7] The treaty went unratified by the U.S., but the guideline became U.S. law with the Radio Act of 1912, confining private users to below 600 meters and above 1,600 (Id., p. 234). The mandated use of 300 meters, only, for ship-to-shore was denounced by National Electric Signaling Co. (Reginald Fessenden's enterprise):

> No way could possibly have been devised better calculated to give the maximum of interference and the minimum of practical service than this proposed rule requiring all ships to use the same party line. [Id., p. 222]

By 1923, with regulation in the hands of Secretary of Commerce Herbert Hoover, radio stations were divided into three classes – high power, medium power and low power. The low power stations were consigned to one wave length – 360 meters – the most congested channel already, Id. P. 316. So from the outset, interference and concern for interference were a by-product of the selected regulatory approach.

With that in mind, we note the comments of another group of public radio stations, the Station Resources Group (Comments, 8/2/99). They contend that LPFM would be inconsistent

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[7] Susan J. Douglas, Inventing American Broadcasting 1899-1922, Baltimore, Johns Hopkins, 1987, p. 140.

with the distributional command of 47 U.S.C. Sec. 307(b). In support, they cite the rationale of the Commission, recently reaffirmed, including the rationale of interference avoidance, in the proceeding establishing a 100-watt power minimum back in the late 1970's (Comments, pp. 8-10). We fail to see this conflict. NFCB supported the downgrading of 10-watt stations in that era, based on the facts obtaining and the record developed at the time. Today, with more sophisticated means of determining predicted interference, including D/U ratios, and a noncommercial FM reservation that is saturated under existing rules, we see merit in trying new approaches to bring new service. That the year 1978 approach was lawful and right does not make a different approach in the year 2000 unlawful or wrong. Nor can we accept that Section 307(b) should ever be used as a barrier to the delivery of new service to the public.

4 **The Record Does Suggest Some Key Precepts for the Analysis of Interference.**

A. **The Commission's own studies are entitled to more weight than are studies funded by industry.**

NAB and Consumer Equipment Manufacturers' Association both submitted studies based on a set of derived radio receiver performance specifications. The CEMA study was underwritten by, and submitted with the comments of public broadcasters adverse to the LPFM, notably CPB. These are usefully placed alongside the study by the Commission's own laboratory.[8] The lab appears to be more optimistic about the resiliency of receivers than these interested parties.

B. **There is No Interference Rationale that would Prevent the Adoption of LPFM Using Existing Guidelines for Station Spacing.**

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[8] William H. Inglis and David L. Means, Second and Third Adjacent Channel Interference Study of FM Boradcast Receivers, July 1999, OET Report TRB-99-1.

It is possible to view the LPFM initiative as a regulatory "fast track" for new FM authorizations (particularly noncommercial ones, as urged above). These have been too long caught up in the Commission's inability to process competing applications. To this day there is no resolution of the proceeding looking to new processing standards for conflicting noncommercial stations. Viewed as a "fast track," a noncommercial LPFM service does these things: (1) It bypasses the cumbersome process for amending the table of allotments; (2) It offers a path for noncommercials to apply in the commercial band; (3) It offers simplified processing of applications, or we all strongly hope so; and (4) It will result in authorization of stations that are subject to a regime of streamlined, minimal regulation.

This record now shows that such a project could be worthwhile in its limited sphere, and could result in quite a few new stations, especially in the rural areas. It could be implemented with no variance from the minimum mileage separations and other rules. There is no technical or interference reason to hesitate in the adoption of rules for such a service.[9] The public would receive new service and, under rules that have been established for many years, no incumbent station would have the technical basis to complain.

C. On the Issue of Relaxing the Second- and Third-Adjacent Guidelines, the Past is a More Reliable Guide than Abstract Predictions about the Future.

As the rules for required station separations have been modified, especially with the spacing requirements adopted in 1963, a number of stations have been grandfathered with much higher facilities than would be newly authorized. Some of these have created laboratories where

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[9] Broadcasters actually stating herein that the interference rules should be **strengthened** have not offered to return for cancellation the permits or licenses of stations causing or even receiving wholesale interference.

extreme second- and third- adjacent interference would be predicted. Has interference occurred in practice? That is the subject of a statement submitted herein by Jeremy Lansman, Statement Regarding Grandfathered Stations, 2nd and 3rd Adjacent FM Station Interference. Searches of the Commission's records have been made to identify complaints of interference in these circumstances, and a virtual absence of complaints is noted. This information is far more persuasive than prediction models, because the latter necessitate use of some greatly simplified norms of receiver performance. In reality the variety of reception conditions is nearly boundless. At some level of pain, however, those affected by interference actually do complain. The absence of complaints should give the Commission strong encouragement to proceed – with care of course – but to proceed further to a practical, achievable relaxation of existing second- and third-adjacent separation standards.

5 **By urging that LPFM be secondary to IBOC, we address the concern about these two initiatives working together.**

NFCB recommended that all LPFM facilities be licensed on a primary basis. We urged, however, that they be treated as secondary to in-band on-channel or other digital facilities to be authorized in the existing band (IBOC). Our member stations expect to be digital broadcasters one day, and obviously do not want their opportunity to migrate to digital service impeded. By placing LPFM applicants on notice now that they will be secondary to the IBOC implementation, there need be no delays while the operational details of IBOC are being worked out. The recent Notice seeking comments on IBOC implementation merely launches a project that is certain to take many twists and turns. Completion of the hybrid years, and full switch over to digital service lie in the distant future.

6 **Other steps will be needed to restore the public forum.**

Perhaps American broadcasting never was the public forum we like to imagine it as having been. The commercial character was firmed up in earliest times. But in recent years, much of the public feeling has been lost. News and public affairs no longer are "sustaining" activities, but are measured by the yard stick of market performance. "Public service" has become formulaic. The breadth of ownership has narrowed and, tragically, the small amount of minority ownership has diminished further. The prices for entry and participation continue to rise sharply. Citizens – who are consumers also, but not merely consumers -- feel measured, metered, marketed to, but not heard.

NFCB is not under the illusion that the LPFM initiative could address this problem in any significant way. Nor should an LPFM service be called upon to do so. Our modest hope would be that LPFM is one opening, one promising avenue that merits full exploration, and final adoption. The larger issues, and the questions of racial equity and justice that are always part of them, remain for the future. The Commission only has its specialized role to play in that, but the role is quite important. We hope this initiative is realized, and that the powerful voices in this record inspire the Agency to think carefully about new ways that it might move forward with other initiatives, looking to a telecommunications system that is inclusive for all Americans.

Respectfully submitted,

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